

this checklist item a BOC must demonstrate that it adheres to applicable industry numbering administration guidelines and FCC rules.<sup>863</sup>

### 3 Analysis

397. Nevada Bell satisfies the requirements of Checklist Item 9 by providing non-discriminatory access to telephone numbers during the time Nevada Bell was still the Central Office ("OC") Code Administrator ("Code Administrator"). On April 22, 1998, the code administrator functions were completely transferred from Nevada Bell to an independent third-party code administrator. Since that date, Nevada Bell has not performed any functions with regards to number administration or assignment, but supported and adhered to applicable number administration rules, regulations and guidelines.<sup>864</sup>

398. When Nevada Bell served as CO Code Administrator in its region, Nevada Bell satisfied the requirements of Section 271(c)(2)(B)(ix) by following number administration guidelines published by the Industry Numbering Committee.<sup>865</sup> Pursuant to those industry-standard procedures, Nevada Bell assigned 44 NXX central office codes representing 440,000 telephone numbers to 4 local service competitors in Nevada.<sup>866</sup> Nevada Bell utilized identical standards and procedures for processing all number requests, regardless of the requesting party, and charged no fees for activating CO codes. Nevada Bell did not turn down any valid requests for NXX code assignments, other than in the course of implementing jeopardy plans for number conservation that had been developed with interested industry participants.<sup>867</sup>

399. On April 22, 1998, in accordance with applicable FCC orders, Lockheed Martin assumed Code Administration responsibilities for Nevada, and NeuSTAR subsequently assumed

<sup>863</sup> See SBC Texas Order ¶ 360; see also Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574 (2000); Numbering Resource Optimization, Second Report and Order, Order on Reconsideration in CC Docket No. 99-200 and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200, CC Docket Nos. 96-98; 99-200, ¶ 306 (2000).

<sup>864</sup> See generally Exhibit 28, Filed Direct Testimony of Jeffrey A. Mondon ("Mondon Direct").

<sup>865</sup> See Id., Mondon Direct ¶¶ 10-18.

<sup>866</sup> See id., Mondon Direct ¶ 13.

<sup>867</sup> See id., Mondon Direct ¶¶ 12-11.

those responsibilities from Lockheed Martin on November 17, 1999.<sup>868</sup> Nevada Bell has had no responsibility for number administration since the completion of this transition of numbering authority. Although Nevada Bell no longer performs any functions with regard to number administration or assignment, Nevada Bell (as a service provider) has complied with numbering administration rules, regulations and industry guidelines.<sup>869</sup>

#### 4. Issues Raised by Staff, BCP and Competitive Providers

400. Nevada Bell clearly satisfies the requirements of Checklist Item 9. Indeed, no parties raised any issues regarding this checklist item, or alleged that Nevada Bell has failed to satisfy such requirements.<sup>870</sup> In addition, Staff recommends that the Commission find that that Nevada Bell has demonstrated full compliance with these requirements of Checklist Item 9.<sup>871</sup> The Commission agrees with Staff and believes that Nevada Bell has demonstrated that it fully complies with the requirements of this checklist item.

### **J. Checklist Item 10 – Databases and Associated Signaling**

#### 1. Overview

401. Nevada Bell satisfies the requirements of Checklist Item 10 by providing CLECs with the same access as Nevada Bell has to databases and associated signaling, thereby allowing calls to or from CLEC customers to be set up just as quickly and routed just as efficiently as calls to, or from, Nevada Bell customers.”“?

#### 2. Standard

402. Section 271(c)(2)(B)(x) requires a BOC to provide “nondiscriminatory access to databases and associated signaling necessary for call routing and completion.”<sup>873</sup> In the Second BellSouth Louisiana Order, the FCC required BellSouth to demonstrate that it provided

<sup>868</sup> See id. Mondon Direct ¶ 18; see also Order. In the matter of Request of Lockheed Martin Corporation and Warburg, Pincus & Co. for Review of the Transfer of the Lockheed Martin Communications Industry Services Business, CC Docket No. 092-237, FCC 99-346 (rel. Nov. 17, 1999).

<sup>869</sup> See Exhibit 28, Mondon Direct ¶ 18.

<sup>870</sup> See Transcript of Proceeding, Vol. 3 at 422-24.

<sup>871</sup> See Exhibit 80, Yapple Direct at 3.

<sup>872</sup> See Exhibit 5, Deere Direct ¶¶ 170-185.

<sup>873</sup> 47 U.S.C.A. § 271(c)(2)(B)(x)

requesting carriers with nondiscriminatory access to: “(1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (3) Service Management Systems (“SMS”).”<sup>874</sup> The FCC also required BellSouth to design, create, test, and deploy Advanced Intelligent Network (“AIN”) based services at the SMS through a Service Creation Environment (“SCE”).<sup>875</sup> In the Local Competition Order, the FCC defined call-related databases as databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of telecommunications service.<sup>876</sup> At that time the FCC required incumbent LECs to provide unbundled access to their call-related databases, including but not limited to: the Line Information Database (“LIDB”), the Toll Free Calling database, the Local Number Portability (“LNP”) database, and AIN databases.<sup>877</sup> In the UNE Remand Order, the FCC clarified that the definition of call-related databases “includes, but is not limited to, the calling name (“CNAM”) database, as well as the 911 and E911 databases.”<sup>878</sup>

### 3. Analysis

403. Section 271(c)(2)(B)(x) requires a BOC to provide “nondiscriminatory access to databases and associated signaling necessary for call routing and completion.”<sup>879</sup> To satisfy this checklist item, the FCC has required a BOC to demonstrate that it provides requesting carriers with nondiscriminatory access to: “(1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (3) SMS.”<sup>880</sup> The evidence of record demonstrates that Nevada Bell affords nondiscriminatory access to these components of its network.

<sup>874</sup> Second BellSouth Louisiana Order ¶ 267.

<sup>875</sup> Id. ¶ 272.

<sup>876</sup> Local Competition Order ¶ 484, n 1126; UNE Remand Order ¶ 403.

<sup>877</sup> Local Competition Order ¶¶ 484-86.

<sup>878</sup> USE Remand Order ¶ 403.

<sup>879</sup> 47 U.S.C.A. § 271(c)(2)(B)(x).

<sup>880</sup> See SBC Texas Order ¶ 362; see also Second BellSouth Louisiana Order ¶ 267.

404. ***Signaling Networks (including signaling links and signaling transfer points).***

Nevada Bell's signaling network enables a CLEC to send signals between its switches (including unbundled switching elements), between the CLEC's switches and Nevada Bell's switches, and between the CLEC's switches and those third party networks with which the Nevada Bell's signaling network is connected.<sup>881</sup> Nevada Bell's network employs SS7 signaling technology.<sup>882</sup> The SS7 network consists generally of the Signal Transfer Point ("STP") (which provides signaling distribution for the network), the Service Switching Point ("SSP") (which processes SS7 signals), and the signaling links (which connect STPs to SSPs and STPs to other STPs).<sup>883</sup> Nevada Bell provides unbundled access to its STP and signaling links.<sup>884</sup> A CLEC that purchases unbundled local switching from Nevada Bell, as part of the switching functionality, receives access to the signaling network in the same manner as Nevada Bell.<sup>885</sup> CLECs can use this unbundled access to furnish SS7-based services for their own end-user customers' calls or local calls of end-user customers of other carriers."

405. Staff conducted its own review of the accessibility of Nevada Bell's switching network, which included the issuance of a request to CLECs to provide any allegations of any discriminatory treatment with respect to switching network.<sup>887</sup> Staff's review did not uncover any evidence to controvert Nevada Bell's showing. Staff recommended the Commission find that Nevada Bell has satisfied this aspect of Checklist Item 10.<sup>888</sup>

406. ***Call-related Databases and Service Management Systems.*** Nevada Bell's call-related databases are those databases, other than OSS, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of telecommunications service.<sup>889</sup> These databases include the LIDB, the Toll Free Calling Database, and where

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<sup>881</sup> See Second BellSouth Louisiana Order, ¶ 269; see Exhibit 5, Deere Direct ¶ 174.  
<sup>882</sup> See Exhibit 5, Deere Direct ¶ 174.  
<sup>883</sup> See id., Deere Direct ¶ 173.  
<sup>884</sup> See id., Deere Direct ¶ 174.  
<sup>885</sup> See id., Deere Direct ¶ 176.  
<sup>886</sup> See id., Deere Direct ¶ 174.  
<sup>887</sup> Exhibit 80, Yaple Direct at 3-5.  
<sup>888</sup> Exhibit 152, Otsuka Direct at X.  
<sup>889</sup> UNE Remand Order ¶ 403.

deployed, the AIN database.”” In the UNE Remand Order, the FCC clarified that the definition of call-related databases includes the CNAM database.”” The SMSs are used to create, modify, and update information in the call-related databases.<sup>892</sup> Nevada Bell ensures that CLECs have nondiscriminatory access to each of the call-related databases, and associated SMS, used by Nevada Bell. This includes the LIDB, the CNAM database, and the Toll Free Calling Database, and their respective SMSs.

407. **LIDB.** The LIDB is used to store the line and billing records generated by a LEC’s end-users.<sup>893</sup> Among other things, this information enables a LEC to validate its end users’ requests for collect, calling card, or third number billing.<sup>894</sup> Nevada Bell stores such information on the Pacific Bell LIDB.”” CLECs may store and access their end-users’ information in Pacific Bell’s LIDB on the same basis as Nevada Bell through the Appendix LIDB of the GIA.<sup>896</sup> CLECs providing resold services receive the same access from Pacific Bell as Nevada Bell receives.<sup>897</sup> Facilities-based CLECs can either receive the same access as Nevada Bell as part of the switching functionality, or by interconnecting with either Nevada Bell’s or Pacific Bell’s SS7 network.<sup>898</sup> To create, update and modify its LIDB records, Nevada Bell accesses a Pacific Bell SMS called Operator Services Marketing Processor (“OSMOP”) through two electronic interfaces.<sup>899</sup> Nevada Bell creates, updates and modifies the LIDB records of CLECs providing resold services. Pacific Bell provides facilities-based CLECs with access to the same interfaces used by Nevada Bell, so that such CLECs may create, update and modify their own LIDB records.<sup>900</sup>

<sup>890</sup> Local Competition Order ¶¶ 484-86

<sup>891</sup> UNE Remand Order ¶ 403.

<sup>892</sup> See 47 C.F.R. § 51.319(e)(3); see also Exhibit 5, Deere Direct ¶¶ 182-92

<sup>893</sup> Exhibit 39, Rogers Direct ¶ 62

<sup>894</sup> See id. Rogers Direct ¶ 62

<sup>895</sup> See id. Rogers Direct ¶ 62.

<sup>896</sup> See id. Rogers Direct ¶ 62; see also Exhibit 4, Hopfinger Direct at Attachment A (Appendix LIDB of the GIA).

<sup>897</sup> See id. Rogers Direct ¶ 66.

<sup>898</sup> See id. Rogers Direct ¶ 64; see also Exhibit 5, Deere Direct ¶¶ 174-81

<sup>899</sup> These interfaces are the Service Order Interface and the Interactive Interface. See Exhibit 39, Rogers Direct ¶ 69.

<sup>900</sup> See Exhibit 39, Rogers Direct ¶ 71-74

408. **CNAM.** The CNAM database houses the information LECs use to provide their end users with Caller ID services.<sup>901</sup> Specifically, this information enables a LECs' end user to view the calling party's name and telephone number before answering a call. Nevada Bell stores and accesses such information on the Pacific Bell LIDB,<sup>903</sup> which CLECs may access on the same basis as Nevada Bell. Nevada Bell enables CLECs to administer their CNAM data in the same manner as Nevada Bell.<sup>905</sup> CLECs providing services through resale or over UNE-P have their data maintained by Pacific Bell in a manner identical to Nevada Bell.<sup>906</sup> Facilities-based CLECs providing service through their own switch have access to the same two electronic interfaces that Pacific Bell uses to access OSMOP.<sup>907</sup>

409. **Toll Free Calling Database.** The Toll Free Calling Database provides the carrier identification function required to determine the appropriate routing of an 800 number based on the geographic origination of the call.<sup>908</sup> Access to the Toll Free Calling Database allows CLECs to access Nevada Bell's 800 database for the purpose of switch query and database response.<sup>909</sup> Nevada Bell's 800 database is updated by the national SMS database. The customer records contained in the national SMS database are created and modified by entities known as Responsible Organizations ("RespOrgs"), which are authorized under Nevada Bell's FCC tariffs to obtain access to the national SMS.<sup>911</sup> All of the features of the Toll Free Calling Database and the 800 database are available to a CLEC and its customers pursuant to Appendix 800 of the GIA.<sup>912</sup>

<sup>901</sup> See *id.* Rogers Direct ¶ 66.

<sup>902</sup> See Exhibit 39, Rogers Direct ¶ 66.

<sup>903</sup> See *id.* Rogers Direct ¶ 62.

<sup>904</sup> Nevada Bell offers access to LIDB through the Appendix LIDB of the GIA. See Exhibit 39 (Rogers Affidavit), at 28, ¶ 62.

<sup>905</sup> See *id.* Rogers Direct ¶ 62.

<sup>906</sup> See *id.* Rogers Direct ¶ 67.

<sup>907</sup> See *id.*

<sup>908</sup> See Exhibit 5, Deere Direct ¶ 186.

<sup>909</sup> See *id.* Deere Direct ¶ 185.

<sup>910</sup> See *id.* Deere Direct ¶ 183.

<sup>911</sup> See *id.* Deere Direct ¶ 183. Nevada Bell does not provide RespOrg services. *Id.*

<sup>912</sup> See Exhibit 4, Hopfinger Direct at CLH Attachment A98-A107 (GIA Appendix 800).

410. *AIN*. Nevada Bell does not offer **AIN** services to its customers, and thus does not yet provide CLECs with access to any AIN-related databases. When Nevada Bell does begin offering AIN services to its customers it will also offer these services to CLECs on a nondiscriminatory basis.””

4. Issues raised by Staff, BCP or Competitive Providers

411. No parties raised any concerns with respect to the signaling system aspects of Nevada Bell’s compliance with Checklist Item 10.<sup>914</sup> WorldCom, however, raised a concern with respect to the manner in which Nevada Bell allows access to one of its call-related databases. Specifically, WorldCom argued that in addition to providing per query access to the CNAM database, Nevada Bell must provide WorldCom with “CNAM listings in bulk to use in [WorldCom’s] own databases.”<sup>915</sup> WorldCom contended it is “discriminatory” of Nevada Bell to provide access on a query-by-query basis rather than on a bulk basis.<sup>916</sup>

412. In response, Nevada Bell pointed out that the CNAM database is designed to deliver calling name and telephone number information on a “query-by-query basis” as part of the Caller ID service.<sup>917</sup> The FCC has made clear that the type of unbundled access that Nevada Bell provides at the STP and signaling links is all that is required.”” The access that Nevada Bell provides to CLECs is the very same access that SWBT provided CLECs in Texas at the time the FCC approved SWBT’s Texas 271 application.”” Moreover, in providing CNAM access to CLEC end office switches on a query-by query basis, Nevada Bell is providing access

<sup>913</sup> See Exhibit 5, Deere Direct ¶ 194.

<sup>914</sup> See Exhibit 80, Yaple Direct or 5: see also Exhibit 5, Deere Direct ¶ 194.

<sup>915</sup> See Exhibit 14, Munoz Direct at 32.

<sup>916</sup> See *id.* Munoz Direct at 34.

<sup>917</sup> See Exhibit 38, Vandagriff Rebuttal at 6.

<sup>918</sup> UNE Remand Order ¶ 310 (“[W]e require incumbent LECs to provide nondiscriminatory access to their call-related databases including, but not limited to, the CNAM Database. . . by means of physical access at the signaling transfer point linked to the unbundled databases.”); cf., Memorandum Opinion and Order, In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Vericon Virginia Inc., and for Expedited Arbitration, DA 02-1731 at 524-27 (rel. July 17, 2002) (rejecting argument that CLEC is entitled to download or otherwise obtain a copy of ILEC’s CNAM database).

Exhibit 38, Vandagriff Rebuttal at 8.

in the identical manner in which Nevada Bell accesses such information.”” Clearly, where the facts show identical treatment, there can be no basis for WorldCom’s claim of discrimination.

413. No other parties raised any issues regarding this checklist item, or alleged that Nevada Bell has failed to satisfy such requirements.”” Staff requested that CLECs provide any information indicating that Nevada Bell has not satisfied any of the requirements of Checklist Item 10.<sup>922</sup> Having concluded its own independent evaluation.”” and having received no contrary information from CLECs in response to its request, Staff recommended that the Commission find that Nevada Bell has demonstrated full compliance with these requirements of Checklist Item 10.<sup>924</sup> The Commission believes that Nevada Bell has demonstrated that it complies with the requirements of this checklist item.

#### **K. Checklist Item 11 --Number Portability**

##### 1. Overview

414. Nevada Bell satisfies the requirements of Checklist Item 11 by having fulfilled all of its obligations in the deployment of interim number portability (“INP”) and long-term LNP in full compliance with the Act and applicable FCC regulations.”” Number portability enables customers of facilities-based CLECs to retain their existing telephone number even after they no longer subscribe to Nevada Bell’s service.”” In implementing LNP in Nevada, Nevada Bell adhered to the FCC’s technical, operational, architectural, and administrative requirements,<sup>927</sup> and has consistently provisioned LNP in accordance with the Commission’s established

<sup>920</sup> Id., Vandagriff Rebuttal at 6-7.

<sup>921</sup> See Transcript of Proceeding, Vol. 3, at 422-24.

<sup>922</sup> See Exhibit 80, Yapple Direct at 2.

<sup>923</sup> See id., Yapple Direct at 9.

<sup>925</sup> Exhibit 152, Phase II-B Otsuka Direct at 3.

<sup>926</sup> 47 U.S.C.A. § 271(c)(2)(B)(xi).

<sup>927</sup> Id. at § 153(30) (defining number portability as “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another”).

<sup>928</sup> Exhibit 111, Mondon Rebuttal at 3.



performance criteria.<sup>928</sup> Nevada Bell has also complied with the FCC's requirements for establishing a competitively neutral LNP cost-recovery mechanism.<sup>929</sup>

z. Standard

41 5. Section 271(c)(2)(B) requires a BOC to comply with the number portability regulations adopted by the FCC pursuant to section 251.<sup>930</sup> Section 251(b)(2) requires all LECs "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the [FCC]."<sup>931</sup> The Act defines number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."<sup>932</sup> Section 251(e)(2) requires that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the [FCC]."<sup>933</sup> Pursuant to these statutory provisions, the FCC requires LECs to offer INP "to the extent technically feasible."<sup>934</sup> The FCC also requires LECs to gradually replace INP with permanent number portability.<sup>935</sup> The FCC has established guidelines for states to follow in mandating a competitively neutral cost-recovery mechanism for INP,<sup>936</sup> and created a competitively neutral cost-recovery mechanism for long-term LNP.<sup>937</sup>

<sup>928</sup> Exhibit 144, Johnson Supplemental Rebuttal at 33-34.

<sup>929</sup> 47 C.F.R. § 52.33. See also Third Report and Order, Telephone Number Portability, FCC 98-82 CC Docket 95-116 (rel. May 12, 1998) ("Third Report and Order").

<sup>930</sup> 47 U.S.C.A. § 271(c)(2)(B)(xi).

<sup>931</sup> Id. at § 251(b)(2).

<sup>932</sup> Id. at § 153(30).

<sup>933</sup> Id. at § 251(e)(2); see also Second BellSouth Louisiana Order ¶ 274; In the Matter of Telephone Number Portability, Fourth Memorandum Opinion and Order on Reconsideration, CC Docket No. 95-116 ¶¶ 1,6-9 (rel. Jun. 23, 1999) (Fourth Number Portability Order).

<sup>934</sup> Fourth Number Portability Order 31 ¶ 10; In re Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking, ¶¶ 110-116 (1996) (First Number Portability Order); see also 47 U.S.C.A. § 251(b)(2).

<sup>935</sup> See 47 C.F.R. § 52.27; Second BellSouth Louisiana Order ¶ 275; First Number Portability Order ¶¶ 3 & 91; Third Number Portability Order ¶¶ 12-16.

<sup>936</sup> See 47 C.F.R. § 52.29; Second BellSouth Louisiana Order ¶ 275.

<sup>937</sup> See 47 C.F.R. §§ 52.32, 52.33; Second BellSouth Louisiana Order ¶ 275.

416. Section 271(c)(2)(B)(xi) requires a BOC's "full compliance" with the number portability regulations adopted by the FCC pursuant to section 251.<sup>938</sup> Section 251(b)(2) requires all LECs "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the [FCC]."<sup>939</sup> Section 251(e)(2) requires that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."<sup>940</sup>

### 3. Analysis

417. The FCC has concluded that in order to satisfy this checklist item a BOC must demonstrate that it offers "interim number portability 'to the extent technically feasible.'"<sup>941</sup> The FCC also requires a BOC to "gradually replace interim number portability with permanent number portability."<sup>942</sup> Finally, the FCC "has established guidelines for states to follow in mandating a competitively neutral cost-recovery mechanism for INP, and created a competitively neutral cost-recovery mechanism for long-term LNP."<sup>943</sup>

418. ***LNP Implementation In Nevada.*** INP allows the porting of telephone numbers through remote call forwarding, direct inward dialing trunk, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible.<sup>944</sup> Nevada Bell developed INP as a temporary means of enabling customers of facilities-based CLECs to retain their phone number when they transitioned to a new local service provider, pending implementation of LNP.<sup>945</sup>

419. In 1996, the FCC established a phased deployment schedule for LNP in the 100 largest Metropolitan Statistical Areas ("MSAs").<sup>946</sup> The FCC's mandatory LNP deployment for

<sup>938</sup> 47 U.S.C.A. § 271(c)(2)(B)(xi).

<sup>939</sup> *Id.* at § 251(b)(2).

<sup>940</sup> *Id.* at § 251(e)(2).

<sup>941</sup> SBC Texas Order ¶ 370.

<sup>942</sup> *Id.*

<sup>943</sup> *Id.*

<sup>944</sup> 47 U.S.C.A. § 271(c)(2)(B)(xi).

<sup>945</sup> See Exhibit 110, Mondon Direct at ¶ 17.

<sup>946</sup> See *id.*, Mondon Direct at ¶ 9.

Nevada only included the Las Vegas MSA, in which Nevada Bell serves the Pahrump, Indian Springs, Sandy Valley, Beatty and Lathrop Wells, Duckwater, Round Mountain and Gabbs Nye County rate centers.<sup>947</sup> The central office serving the Pahrump exchange serves the other Las Vegas MSA rates centers with remote switches. In accordance with the FCC's implementation schedule, Nevada Bell deployed LNP in the Pahrump exchange on July 29, 1999.<sup>948</sup> Subsequently, Nevada Bell implemented LNP in all its central office switches in conformance with the FCC's regulations."'' Nevada Bell has timely implemented LNP using the Location Routing Number ("LRN") method "preferred" by the FCC.<sup>950</sup> Because LNP has now been implemented in every Nevada Bell switch, Nevada Bell no longer offers new INP arrangements.<sup>951</sup> Nevada Bell offers facilities-based CLECs a one-day instructor-led workshop to explain the use of reference materials and forms for ordering LNP from Nevada Bell.'''

420. ***Technical, Operational, Architectural, And Administrative Requirements.*** The FCC has established certain technical, operational, architectural, and administrative requirements for number portability, including: (i) Number Portability Administration Center ("NPAC") process flows;'''' (ii) Functional Requirements Specifications ("FRS"), and Interoperable Interface Specifications ("IIS"); (iii) policy for reserved and unassigned numbers; (iv) N-1 carrier call routing obligations and default routing;<sup>954</sup> (v) policy for treatment of disconnected ported numbers; and, (vi) change management process.<sup>955</sup> Nevada Bell is in compliance with these technical, operational, architectural, and administrative requirements.<sup>956</sup>

''' See id., Mondon Direct at ¶ 10.

<sup>948</sup> See id., Mondon Direct at ¶ 10.

<sup>949</sup> See id., Mondon Direct at ¶ 17.

<sup>950</sup> Second Report and Order, Telephone Number Portability, CC Docket No. 95-116, ¶ 9 (1997).

<sup>951</sup> See Exhibit 5, Deere Direct ¶ 197.

<sup>952</sup> See Exhibit 4, Hopfinger Direct ¶ 145.

<sup>953</sup> The Number Portability Administration Center ("NPAC") is the neutral third party administrator (currently Lockheed Martin) of the Regional Service management System ("RSMS"), which is a shared data based containing information on all ported number in a particular geographic region. See Exhibit 110, Mondon Direct ¶ 18.

<sup>954</sup> The "N" carrier is the entity terminating the call to the end user, and the "N-1" carrier is the entity transferring the call to the N (terminating carrier). See Exhibit 110, Mondon Direct ¶ 19, fn. 5.

<sup>955</sup> See id., Mondon Direct ¶ 19.

<sup>956</sup> See id., Mondon Direct ¶ 20.

421. Nevada Bell has integrated the NPAC provisioning process flows into its ordering and provisioning OSS modifications.”” Nevada Bell’s implementation of number portability is also in compliance with the FRS and IIS, and has developed processes to port customer-related rescinded numbers.<sup>958</sup> As the “N-1 carrier,” Nevada Bell has designed its network to handle LNP queries (and prearranged and anticipated default queries performed on behalf of other N-1 carriers).”” For disconnected ported numbers, Nevada Bell has integrated the process for “snapback” to the service provider listed in the Local Exchange Routing Guide (“LERG”) for the assigned NXX.<sup>960</sup> Finally, through its SBC representation, Nevada Bell continues to be an active participant in the North American Numbering Council (“NANC”) by recommending, developing and implementing new processes and procedures.””

**322. *Provisioning Of LNP In Accordance With Established Performance Criteria.*** A CLEC initiates a number portability request by submitting a Local Service Request (“LSR”) to the Pacific Bell/Nevada Bell Regional LSC to port out telephone number(s) (“TN(s)”).<sup>962</sup> CLECs may order LNP, with or without an unbundled loop,”“ through Nevada Bell’s LEX interrace or EDI Gateway.<sup>964</sup> The Pacific Bell/Nevada Bell Regional LSC processes and returns a FOC within standard intervals established by the Commission.<sup>965</sup> The CLEC must then forward a Subscription Version (“SV”) to NPAC; Nevada Bell creates its own NPAC SV, which will concur with the CLEC’s intent to port the TN(s).<sup>966</sup> Next, the CLEC activates its NPAC SV

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<sup>957</sup> See *id.*

<sup>958</sup> See *id.*

<sup>959</sup> See *id.*

<sup>960</sup> See *id.*

<sup>961</sup> See *id.*, *Mondon Direct* ¶ 20.

<sup>962</sup> See *id.*, *Mondon Direct* ¶ 15.

<sup>963</sup> Nevada Bell uses an unconditional 10-digit trigger feature for most LNP porting orders, eliminating the need to coordinate Nevada Bell’s disconnect translation with the new service provider’s switch translation and any physical loop work that may be required. In the limited instances where the unconditional 10-digit trigger is not available, Nevada Bell recommends a coordinated cutover. See *id.*, *Mondon Direct* ¶ 21.

<sup>964</sup> See Discussion of Checklist Item 2 *supra*. (Huston/Lawson: Rigorous third-party testing and actual operational experience have established these systems’ ability to support ordering, maintenance and repair, and billing of LNP).

<sup>965</sup> See Discussion of Checklist Item 2 *supra*. (discussing assessing FOC return intervals).

<sup>966</sup> See Exhibit 110, *Mondon Direct* ¶ 15.

on the due date, and the NPAC then broadcasts the TN(s) and associated LNP routing information to all providers' Local Serviced Management Systems ("LAMS").""

423. Nevada Bell's performance generally for LNP is outstanding.<sup>968</sup> The quality of Nevada Bell's network provisioning activities is tracked in PM 10.<sup>969</sup> In the months June, July and August 2001, Nevada Bell's recorded perfect results for PM 10.<sup>970</sup> The quality of Nevada Bell's provisioning process related to facilities, including loops and the process used to convert customer loops (PMs 15 and 16), the quality of Nevada Bell's provisioning process used to covert loops using coordinated conversions (PM 9), and Nevada Bell's maintenance timeliness and quality for troubles associated with Nevada Bell's network that impact ported services (PMs 19 through 23), are discussed in Section V(B)(5)(c) *supra*.

424. ***Competitively Neutral LNP Cost-Recovery Mechanism.*** Section 251(e)(2) requires that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the [FCC]."<sup>971</sup> In September 1999, Nevada Bell filed charges to comply with the applicable FCC cost classification orders.<sup>972</sup>

#### 4. Issues Raised By Staff, BCP, and Competitive Providers

425. No parties raised any concerns with respect to the implementation, technical or cost recovery aspects of Nevada Bell's compliance with Checklist Item 9.<sup>973</sup> Staff, however, raised a concern with respect to Nevada Bell's performance results for PM 10, which assesses the quality of network provisioning activities for number portability orders. Specifically, as of August, 2001, Staff concluded that based on the results for PM 10, Nevada Bell had failed to demonstrate compliance with this checklist item.<sup>974</sup> After reviewing more recent data, as of September, 2001, Staff recognized that Nevada Bell only missed "0.03, indicating that Nevada

<sup>967</sup> See Exhibit 110, *Mondon Direct* ¶15.

<sup>968</sup> See Exhibit 144, *Johnson Supplemental Rebuttal* at 57.

<sup>969</sup> See Exhibit 140, *Gleason Johnson Joint Direct* ¶ 84.

<sup>970</sup> See Exhibit 144, *Johnson Supplemental Rebuttal*, CSJ Attachment K, PM 10

<sup>971</sup> 37 U.S.C.A. § 251(e)(2); see also *Second BellSouth Louisiana Order* ¶ 274.

<sup>972</sup> See Exhibit 110, *Mondon Direct* ¶ 25.

<sup>973</sup> See, e.g., Exhibit E, *Moots Direct* at 4.

<sup>974</sup> Exhibit 152, *Phase II-B Otsuka Direct* at 23-4.

Bell missed about 3 LNP provisioning events out of about 10,600 occasions.”” Staff concluded, in light of the near perfect performance in this area, that “Nevada Bell has demonstrated that it provides Number Portability to CLECs in a nondiscriminatory manner.””<sup>976</sup>

426. In light of Nevada Bell’s evidence, and Staff’s recommendation, the Commission believes that Nevada Bell has demonstrated that it complies with the requirements of this checklist item.

## **L. Checklist Item 12 – Local Dialing Parity**

### 1. Overview

427. Nevada Bell satisfies the requirements of Checklist Item 12 by providing local dialing parity to competing carriers.<sup>977</sup> Local dialing parity ensures that CLECs’ customers are able to place calls within a given local calling area by dialing the same number of digits as an ILEC end user with no unreasonable dialing delays.” Nevada Bell ensures that CLEC customers can make local calls by dialing the same number of digits as Nevada Bell’s own customers with no difference in dialing requirements or built-in delays.<sup>979</sup>

### 2. Standard

428. Section 271(c)(2)(B)(xii) requires a BOC to provide “[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3).”<sup>980</sup> Section 251(b)(3) imposes upon all LECs “[t]he duty to provide dialing parity to competing providers of

<sup>975</sup> Exhibit 153, Phase II-B Otsuka Supplemental Direct at 6

<sup>976</sup> Exhibit 153, Phase II-B Otsuka Supplemental Direct at 6.

<sup>977</sup> & Exhibit 5, Deere Direct ¶ 201

<sup>978</sup> SBC Texas Order ¶ 374; see also Local Competition Order ¶ 4.

<sup>979</sup> See Exhibit 5, Deere Direct ¶ 202

<sup>980</sup> Based on the FCC’s view that section 251(b)(3) does not limit the duty to provide dialing parity to any particular form of dialing parity (i.e., international, interstate, intrastate, or local), the FCC adopted rules in August 1996 to implement broad guidelines and minimum nationwide standards for dialing parity. Local Competition Second Report and Order, 11 FCC Rcd at 19407; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, Further Order On Reconsideration, FCC 99-170 (rel. July 19, 1999).

telephone exchange service and telephone toll service. . .with no unreasonable dialing delays.””””

Section 153(15) of the Act defines “dialing parity” as follows:

[A] person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer’s designation . . .<sup>982</sup>

The rules implementing section 251(b)(3) provide that customers of competing carriers be able to dial the same number of digits the BOC’s customers dial to complete a local telephone call.<sup>983</sup>

Moreover, customers of competing carriers must not otherwise suffer inferior quality service, such as unreasonable dialing delays, compared to the BOC’s customers.<sup>984</sup>

429. The FCC’s rules implementing section 251(b)(3) provide that customers of competing carriers *must be able to dial the same number of digits* the BOC’s customers dial to complete a local telephone call.<sup>985</sup> Customers of competing carriers must not otherwise suffer inferior quality service, such as unreasonable dialing delays, compared to the BOC’s customers.”” In the FCC’s view, “local dialing parity will be achieved upon implementation of the number portability and interconnection requirements of Section 251.”<sup>987</sup>

### 3. Analysis

430. Through the implementation of number portability and through its interconnection arrangements, Nevada Bell has implemented the requirements of local dialing parity. First, as discussed in Section V(K), Nevada Bell has fulfilled all its obligations in the deployment of interim and long-term number portability in full compliance with the Act and applicable FCC regulations. Second, Nevada Bell’s interconnection agreements do not require any CLEC to use

<sup>981</sup> 47 U.S.C.A. § 251(b)(3).

<sup>982</sup> Id. § 153(15).

<sup>983</sup> 47 C.F.R. §§ 51.205, 51.207.

<sup>984</sup> See 47 C.F.R. § 51.207 (requiring same number of digits to be dialed).

<sup>985</sup> 47 C.F.R. §§ 51.205, 51.207.

<sup>986</sup> See 47 C.F.R. § 51.207 (requiring same number of digits to be dialed); Local Competition Order ¶ 9

<sup>987</sup> Id. ¶ 68.

access codes or additional digits to complete calls to Nevada Bell customers.<sup>988</sup> Indeed, “[t]he interconnection of Nevada Bell networks and the network of CLECs are seamless from a customer perspective.”<sup>989</sup>

#### 4. Issues raised by Staff, BCP or Competitive Providers

131. Staff fully evaluated Nevada Bell's affidavits regarding compliance with this checklist item, and actively solicited comments or information from CLECs.<sup>990</sup> After conducting its evaluation, Staff confirmed that Nevada Bell had satisfied the requirements of Checklist Item 12.<sup>991</sup> The Commission believes that Nevada Bell has demonstrated that it complies with the requirements of this checklist item.

### **M. Checklist Item 13 – Reciprocal Compensation**

#### 1. Overview

432. Nevada Bell satisfies the requirements ~~of~~ Checklist Item 13 by having in place reciprocal compensation arrangements in accordance with section 252(d)(2). Reciprocal compensation applies in cases where two carriers collaborate to complete a local call – ensuring that when a customer of Carrier A (incumbent or competitor) places a call to a customer of Carrier B in the same local area, Carrier A pays Carrier B for completing that local call, and vice versa.<sup>992</sup> Nevada Bell has entered into Commission-approved interconnection agreements that contain rates, terms, and conditions for the mutual and reciprocal exchange of local telecommunications traffic

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<sup>988</sup> See Exhibit 5, Deere Direct ¶ 202

<sup>989</sup> See id.

<sup>990</sup> Exhibit 81, Moors Direct at 1-2, 6. see also Exhibit 20, Burdette Direct at 3

<sup>991</sup> Exhibit 150, Otsuka Direct at 9-10.

<sup>992</sup> See Local Competition Order ¶ 1034.



2. Standard

433. Section 271(c)(2)(B)(xiii) requires that a BOC enter into “[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2).”<sup>993</sup> In turn, pursuant to section 252(d)(2)(A), “a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier’s network facilities of calls that originate on the network facilities of the other carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.”<sup>994</sup>

3. Analysis

434. Consistent with the foregoing standards, Nevada Bell’s interconnection agreements contain clearly defined arrangements for each party to compensate the other for traffic exchanged between their networks.<sup>995</sup> Nevada Bell has negotiated Commission-approved provisions governing the mutual exchange of local traffic in its interconnection agreements.<sup>996</sup> The rates Nevada Bell charges for the transport and termination of local traffic are based on the costs of those functions as determined by the Commission.””” Under these arrangements, between January 1907, and May, 2000, Nevada Bell received more than 16 million minutes of traffic from CLECs’ customers, and CLECs received more than 197 million minutes of traffic from Nevada Bell’s customers.<sup>998</sup>

4. Issues Raised by Staff, BCP or Competitive Providers

435. No parties raised any issues related to Nevada Bell reciprocal compensation obligations under Section 252(b)(5). ATG did note that Nevada Bell had appealed an arbitration order concerning “certain issues related to Nevada Bell’s payment of reciprocal compensation to

<sup>993</sup> 47 U.S.C.A. § 271(c)(2)(B)(xiii).

<sup>994</sup> Id. § 252 (d)(2)(A).

<sup>995</sup> See Exhibit 4, Hopfinger Direct ¶ 100(citing thr GIA’s appendix Reciprocal Compensation).

<sup>996</sup> See id., Hopfinger Direct ¶ 101

<sup>997</sup> See id., Hopfinger Direct ¶ 102

<sup>998</sup> Exhibit 9, Bush Direct ¶ 9.

ATG and Pac-West Communications" for "traffic terminated by Pac-West and ATG to Internet Service Providers 'ISPs.'"<sup>999</sup> In response, Nevada Bell pointed out that during the pendency of the appeal it was fully complying with the arbitration order. More importantly, however, reciprocal compensation for ISP-bound traffic is *not* governed by section 251(b)(5).<sup>1000</sup> Accordingly, reciprocal compensation with respect to ISP-bound traffic is not a checklist item.<sup>1001</sup>

436. Based on the testimony filed by Nevada Bell, BCP concluded that Nevada Bell had demonstrated its compliance with Checklist Item 13.<sup>1002</sup> Staff, having concluded its own "independent evaluation," and having received no contrary information from CLECs in response to its requests for information, also recommended that the Commission find that Nevada Bell has demonstrated compliance with these requirements of this checklist item.<sup>1003</sup> The Commission believes that Nevada Bell has demonstrated it complies with the requirements of Checklist Item 13.

## **P. Checklist Item 14: Resale products**

### 1. Overview

337. Nevada Bell's resale offerings allow competitive providers to enter the Company's local exchange market without investment or delay. CLECs were reselling more than 6,000 business and residential lines as of July, 1999. This fact confirms the viability of Nevada Bell's resale offerings as an effective means of entering the local exchange market.

<sup>999</sup> Exhibit 17, Thomas Direct at 38. This reference is to Order Adopting Revised Arbitration Decision. In re petition of Pac-West Telecomm. Inc. for arbitration pursuant to Section 252 of the Telecommunications Act of 1996 to establish an Interconnection Agreement with Nevada Bell. PUCN Docket Nos. 98-10015 & 99-1007 (iss. April 12, 1999) (the "Pac-West Arbitration Order"), ¶ 64 (rev'd on other grounds, Nevada Bell v. Judy Sheldrew, et al., Case No. CV-N-9900492-HDM (RAM) (D. Nev.), appealed on other grounds, Nevada Bell v. Judy Sheldrew, et al., U.S. Court of Appeals Docket No. 01-15790 (9th Cir.)).

<sup>1000</sup> See Order on Remand and Report and Order. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996: Intercarrier Compensation For ISP-Bound Traffic. CC Docket No. 96-98, FCC 01-131, ¶ 30 (rel. April 27, 2001) (holding that "Congress intended to exempt certain enumerated categories of service from section 251(b)(5) when the service provided to interexchange carriers or information service providers.")

<sup>1001</sup> See Bell Atlantic New York 271 Order ¶ 377 ("Inter-carrier compensation for ISP bound traffic, however, is not governed by section 251(b)(5), and, therefore, is not a checklist item.").

<sup>1002</sup> Exhibit 19, Friduss/Hempfling Direct at 57. See also Transcript of Proceeding, Vol. 9 at 1285-87.

<sup>1003</sup> Exhibit 80, Yaple Direct at 7-8; see also Exhibit 152, Otsuka Direct at 9-10.

438. The Company makes available for resale the same services that it furnishes to its own retail customers. CLECs may purchase those services at an appropriate discount rate determined in compliance with the requirements of the Act. When competitive providers purchase such services, Nevada Bell provisions the order in a nondiscriminatory manner. Nevada Bell then maintains and repairs the service in a nondiscriminatory manner. Finally, Nevada Bell delivers accurate billing information in a timely manner, allowing competitive providers to bill their end-users for resale products. The Company, in sum, satisfies the requirements of Checklist Item 14.

c. Standard

439. The Act contemplates different methods of competitive entry. For instance, the Act allows a CLEC to enter the local exchange market by installing its own facilities (e.g., switching equipment) and combining those facilities with unbundled network elements (e.g., a loop and transport) purchased from the incumbent. The Act also allows a CLEC to enter an incumbent's local exchange market without investing in any telecommunications facilities. An incumbent LEC, such as Nevada Bell, must allow other carriers to resell its retail offerings. The FCC assesses whether a 271 applicant provides CLECs nondiscriminatory wholesale access to the applicant's retail offering under Checklist Item 14.

440. Checklist Item 14 requires Nevada Bell to make "telecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)."<sup>1004</sup> Nevada Bell must "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."<sup>1005</sup> The wholesale rate must be determined "on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."<sup>1006</sup> The Company cannot impose "unreasonable or discriminatory conditions or

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<sup>1004</sup> SBC Texas Order at ¶ 190.

<sup>1005</sup> Id. § 251(c)(4)(A).

<sup>1006</sup> Id. § 252(d)(3).

limitations" on service resold under section 251(c)(4)(A).<sup>1007</sup> In accordance with sections 271(c)(2)(B)(ii) and 271(c)(2)(B)(xiv), Nevada Bell must also demonstrate that it provides nondiscriminatory access to OSS for the resale of its retail telecommunications services.<sup>1008</sup>

### 3. Analysis

#### a. Nevada Bell makes available retail services at wholesale rates

441. Nevada Bell complies with the requirements of Checklist Item 14. CLECs can purchase at wholesale rates any service that Nevada Bell provides at retail to subscribers who are not telecommunication carriers.<sup>1009</sup> The Commission has established a generally applicable wholesale discount rate of 18.05 percent.<sup>1010</sup> The discount rate applicable to OS and DA service is 0.15 percent. The Company's generic interconnection offering,<sup>1011</sup> and various interconnection agreements approved by the Commission, including the CAT Communications Agreement,<sup>1012</sup> contain legally binding resale obligations. Under those agreements, CLECs can sell a service to the same class of customers as Nevada Bell.<sup>1013</sup> "CLECs [also] may resell Nevada Bell's promotional offerings that are greater than 89 days in length at the promotional rate less the avoided cost discount established by the [Commission]."<sup>1014</sup>

#### b. Nevada Bell provides nondiscriminatory access to ordering, provisioning, and maintenance and repair functions

##### (1) Ordering and Provisioning of resale services

442. Nevada Bell's performance data establish that the Company provisions, maintains and repairs resold services for CLEC end-users in substantially the same time and manner as it does for its own end-users.<sup>1015</sup> First, the data show that Nevada Bell provisions resale services in

<sup>1007</sup> Id. § 251(c)(4)(B).

<sup>1008</sup> Local Competition Order ¶ 939; 47 C.F.R. § 51.613(b).

<sup>1009</sup> See Exhibit 4, Hopfinger Direct ¶ 108 and 110.

<sup>1010</sup> Id. ¶ 132.

<sup>1011</sup> Id., Attachment CLH-A.

<sup>1012</sup> See Exhibit 69, Hopfinger Rebuttal at 6.

<sup>1013</sup> See Exhibit 4, Hopfinger Direct ¶ 111 & 113; id., Exhibit 4, Attachment CLH-A at 454 (GIA Appendix Resale), ¶ 3.2.

<sup>1014</sup> See id., Hopfinger Direct at ¶ 112.

<sup>1015</sup> As explained above, Nevada Bell's electronic and manual pre-ordering and ordering interfaces satisfy the requirements of Checklist Item 7. CLECs can use those interfaces to obtain resale services. Between April and

a timely manner. Between June and August, 2001, installation intervals for residential POTS orders just exceeded one day, were less than a day for business POTS orders, and ranged from one to three days for CENTREX services.<sup>1016</sup> During that same time frame, Nevada Bell placed less than one percent of the CLECs' residential and business POTS orders in jeopardy.<sup>1017</sup> For CENTREX orders, the figure **was** less than two percent.<sup>1018</sup> Finally, Nevada Bell missed fewer due dates for the CLECs' end-users than it did for its retail customers.<sup>1019</sup>

443. Second, resale products delivered to the CLECs' end-users are at least equal in quality to the service provided to Nevada Bell's retail customers. CLECs experienced trouble within 30 days of provisioning on two percent or less of all resale residential POTS orders between June and August, 2001.<sup>1020</sup> In fact, CLECs reported trouble on less than one percent of the more than 1,460 resale residential POTS orders provisioned by Nevada Bell between January and August, 2001.<sup>1021</sup> CLECs likewise reported trouble less frequently on newly provisioned resold CENTREX service every month between February and August, 2001.<sup>1022</sup>

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August 2001, Nevada Bell's electronically returned FOCs or electronically received, received orders within the benchmark. See Johnson Supplemental Rebuttal, GSJ Attachment K, Exhibit 144, PM 2, Submeasures 200100 and 200101. For those orders that were electronically received, but handled manually, the Company satisfied the benchmark each month between April and June 2001. Id., Exhibit 144, PM 2, Submeasure 202800. Finally for manually received resale orders, the Company satisfied the benchmark every month between April and August for more than 3,583 residential POTS, business POTS and CENTREX orders. Id., PM 2, Submeasures 205300, 205301, 205400, 205401 and 205600.

<sup>1016</sup> See Exhibit 144, Johnson Supplemental Rebuttal at 57-58. Results for orders that required field work satisfied the parity standard, while in July, the result for orders that did not require field work missed that statistical parity test even though the absolute performance interval **was** more than 100 minutes shorter for CLECs (.56 days) than retail customers (.63 days). Id., Exhibit 144, PM 7, Submeasures 702600 and 702700.

<sup>1017</sup> Id. at 57.

<sup>1018</sup> Id.

<sup>1019</sup> Id.

<sup>1020</sup> Id.

<sup>1021</sup> Id. at 58 n. 149.

<sup>1022</sup> See Exhibit 144, Johnson Supplemental Rebuttal, GSJ Attachment K, PM 16, Submeasure 1601800; see also Exhibit 144, Johnson Supplemental Rebuttal, CSJ Attachment H, PM 16, Submeasure 1601800. During that time, monthly volumes ranged from 117 to 278.

(2) Maintenance and Repair

444. Third, Nevada Bell performs maintenance and repair functions for CLECs on resale products in a timely and nondiscriminatory manner. CLEC customers reported trouble on less than one percent of the resale residential POTS, business POTS, and CENTREX service.<sup>1023</sup> When CLEC customers reported trouble, Nevada Bell satisfied the PM 21 – Average Time to Restore Trouble – parity submeasure each month between June and August, 2001 for all resale products with one exception: resale CENTREX service in July, 2001.<sup>1024</sup> In July, Nevada Bell required 11.73 hours to resolve one CENTREX trouble ticket, which caused the Company to miss the parity measure.<sup>1025</sup> Even so, Nevada Bell satisfied the PM 20 – Percent of Troubles Resolved within the Estimated Time – parity standard in July.<sup>1026</sup> These results show that the Regional OSS resolves troubles for resale services in a timely and nondiscriminatory manner; Pacific Bell's performance data,<sup>1027</sup> and the California Order,<sup>1028</sup> corroborated that showing.

445. Fourth, the Company provides maintenance and repair services for CLEC customers that are at least equal in quality to the maintenance and repair services that it provides to its retail customers. Between June and August, 2001, Nevada Bell missed only one of eight submeasures, failing to provide statistical parity service for resale residential POTS in June.<sup>1029</sup> Once again, the quantitative data establishes that the Company provides maintenance and repair services for resale products that is at least equal in quality to the maintenance and repair services that Nevada Bell provides to its retail customers. Pacific Bell's performance data corroborate that conclusion.<sup>1030</sup> After reviewing the final OSS test results, the CPUC reached the same conclusion, finding that the test demonstrated that the Regional OSS provides CLECs sufficient

<sup>1023</sup> See Exhibit 144, Johnson Supplemental Rebuttal at 59 & 59 n. 151.

<sup>1024</sup> Id. at 59 & 59 n. 152. Between January and August 2001, Nevada Bell resolved all but one of the residential trouble tickets submitted by CLECs within the estimate time. Id. at 59 n. 152. During that same period, the Company also satisfied the applicable performance standard for CENTREX trouble tickets. Id.

<sup>1025</sup> Id.

<sup>1026</sup> See Exhibit 144, Johnson Supplemental Rebuttal, GSJ Attachment K, PM 20, Submeasure 2093800.

<sup>1027</sup> See id., Johnson Supplemental Rebuttal at 60 n. 155.

<sup>1028</sup> California Order at 54 ("We further find that the OSS test has shown that the M&R systems have basic functionality.").

<sup>1029</sup> See Exhibit 144, Johnson Supplemental Rebuttal at 59.

<sup>1030</sup> Id. at 60 n. 155.

access to maintenance and repair functions to show compliance with the requirements of the Act.<sup>1031</sup>

c. Billing

446. The Act obligates Nevada Bell to provide competing carriers with reports on the service usage of competing carriers' customers in substantially the same time and manner as the Company provides such information to itself.<sup>1032</sup> The data establishes that Nevada Bell meets this aspect of Checklist Item 14, providing CLECs timely and accurate usage information for resale products.

347. Overall, the Company's billing performance for resale products has been "very good."<sup>1033</sup> Between June and August, 2001, the Company satisfied the PM 28 (Usage Timeliness), PM 33 (Non-Recurring Charge Completeness), and PM 34 (Bill Accuracy) parity standards.<sup>1034</sup> Nevada Bell's PM 30 results, which reflect the "timeliness with which Nevada Bell provides a mechanized bill to a CLEC,"<sup>1035</sup> establish that Nevada Bell delivers wholesale bills to CLECs in a timely manner.<sup>1036</sup> The Company, moreover, has improved its performance under PMs 31 and 32, which reflect usage and recurring charge completeness, respectively. Between January and August 2001, Nevada Bell satisfied the PM 31 parity standard each month except May and August.<sup>1037</sup> The two misses, however, were by less than one percent.<sup>1038</sup> In June, Nevada Bell missed PM 33, but the trend showed improving results with the Company satisfying the parity standard in July and August, 2001.<sup>1039</sup>

448. The Nevada specific Regional OSS performance data demonstrate that Nevada Bell meets this aspect of Checklist Item 14, providing timely and accurate bills for resale

<sup>1031</sup> See California Order at 54 ("We further find that the OSS test has shown that the M&R systems have basic functionality.")

<sup>1032</sup> See SBC Texas Order ¶ 210 ("SWBT is obligated to provide competing carriers with complete and accurate reports on the service usage of competing carriers' customers in substantially the same time and manner that SWBT provide such information to itself.")

<sup>1033</sup> See Exhibit 144, Johnson Supplemental Rebuttal at 29.

<sup>1034</sup> Id.

<sup>1035</sup> Id. at 30

<sup>1036</sup> Id.

<sup>1037</sup> Id.

<sup>1038</sup> Id.

<sup>1039</sup> Id.

products. The California specific Regional OSS performance results, the California OSS test and the California Order confirm that conclusion. Pacific Bell did not miss a single resale subnिकासुर under PM 28, 30, 32, or 34 between June and August, 2001.<sup>1040</sup> Pacific Bell missed PM 31 one time, in June by 0.7 percent, during that three month period."'' Moreover, the final OSS test report shows that the Regional OSS causes CLEC end-user call information to appear in daily usage files in a timely manner."'' The report also establishes that recurring and non-recurring charges are tracked and reported accurately and timely.<sup>1043</sup> The Regional OSS, in short, satisfies the billing requirements of Checklist Item 14.<sup>1044</sup>

d. Issues raised by Staff, BCP or competitive providers

449. BCP did not challenge Nevada Bell's assertions that (i) the "services Nevada Bell provides CLECs for resale are identical to the services Nevada Bell provides to its own customers," and (ii) the Company's OSS "allow resellers access to all pre-order, order, provisioning, maintenance and billing functions."'''' BCP deferred a final recommendation about Checklist Item 14 to Phase II of the proceedings, but did not provide testimony in Phase II.<sup>1046</sup>

450. Staff confirmed that Nevada Bell offers "resold services at Commission determined wholesale rates," and that "Nevada Bell [offers] To resale telecommunication services that are provided at retail to subscribers who are not telecommunication carriers."<sup>1047</sup> After conducting supplemental analysis in August and September, 2001, Staff concluded that "Nevada Bell has demonstrated that it provides [Resale] services to CLECs in a nondiscriminatory manner" in compliance with Checklist Item 14.<sup>1048</sup> Staff, however, asserted

<sup>1040</sup> Id. at 29 n. 55.

<sup>1041</sup> Id.

<sup>1042</sup> California Order at 95

<sup>1043</sup> Id.

<sup>1044</sup> See id. at 2 (concluding that Pacific Bell provides nondiscriminatory access to unbundled network elements, including OSS, in compliance with the requirements of Checklist Item 2).

<sup>1045</sup> See Exhibit 19, Friduss/Hempfling Joint Testimony at 58

<sup>1046</sup> See id.

<sup>1047</sup> See Exhibit 152, Phase II-B Otsuka Direct at 25.

<sup>1048</sup> See Exhibit 153, Phase II-B Otsuka Supplemental Direct at 3



that Nevada Bell's affiliate, ASI, did not offer for resale at wholesale rates xDSL services in compliance with Checklist Item 14.<sup>1049</sup>

451. Nevada Bell's advanced service affiliate, ASI, complies with its obligations under the Act. ASI "does not offer its [wholesale] DSL Transport [service] to retail end-users on a stand-alone basis (except for [certain] ... 'grandfathered' retail customers ...)." <sup>1050</sup> ASI does allow CLECs to resell its retail DSL services, which are only provided to a limited number of grandfathered customers.<sup>1051</sup> However, the Commission does not have to resolve the dispute between Nevada Bell and Staff in fulfilling its fact-finding mission under the Act. Staff and the CLECs did not dispute the facts to which Nevada Bell's witness John Habeeb testified. Rather, the dispute between Staff and Nevada Bell centers on claims that are "similar to claims that were made before the Missouri Public Utilities Commission and arguments that have been posed by other CLECs in the context of the ASCENT litigation."<sup>1052</sup> **As** the Commission has recognized, its task is to develop the facts, not resolve issues of first impression under federal telecommunications law.<sup>1053</sup> The Commission has fulfilled its mission, discerning the facts and presenting a clear record for resolution by the FCC.

452. WorldCom raised issues regarding Nevada Bell's billing services. Those issues, which related to UNE rather than resale products, are addressed in Section V(8)

453. Overall, Nevada Bell's performance results demonstrate that the Company complies with the requirements of Checklist Item 14. Considering all of the facts, including the

<sup>1049</sup> See Exhibit 152, Phase II-B Otsuka Direct at 25-27.

<sup>1050</sup> See Exhibit 113, Habeeb Rebuttal at 3.

<sup>1051</sup> Id. at 12-14.

<sup>1052</sup> See Exhibit 113, Habeeb Rebuttal at 3; see also Exhibit 152, Phase II-B Otsuka Direct at 26 ("However, Staff notes that this problem was caused by the FCC's SBC Ameritech Merger Order (FCC 99-279) and the recent D.C. Circuit decision, rather than Nevada Bell/ASI. Staff notes that the FCC faced the same problem in the Verizon-Connecticut 271 Case (FCC 01-208).") (footnote omitted). While the issue presented in Verizon's Connecticut 271 application was a different one, see generally Exhibit 113, Habeeb Rebuttal the quoted passage demonstrates that Staff and Nevada Bell simply disagree about the meaning of federal law.

<sup>1053</sup> Order Denying Motion to Dismiss, In re petition for review and approval of the draft application by SBC Communications, Inc., Nevada Bell Telephone Company and Southwestern Bell Communications Services, Inc., d/b a Nevada Bell Long Distance, for provision of in-region interLATA services in Nevada, Docket No. 00-7031 (iss. Nov. 7, 2000) ("It is not the Commission's role to try to predict an FCC outcome. Instead, it is the Commission's responsibility to undertake the initial analysis and develop a record, and permit the FCC to examine the record and exercise its authority under the Act.")

Regional OSS' California specific performance results, Staff reached the same conclusion. The only issue under Checklist Item 14 that divided Nevada Bell, on the one hand, and Staff and competitive providers, on the other hand, is a question of how the resale provisions of the Act apply to the factual record developed by the Commission. Having discharged responsibility to develop a complete record for review by the FCC, the Commission need not attempt to resolve whether the Act obligates ASI to allow competitive providers to purchase its wholesale DSL Transport service at an avoided cost discount. Based upon the factual record developed, the Commission believes it can recommend that Nevada Bell meets its obligations under Checklist Item 14, and allow the FCC to apply the ASCENT decision in the first instance.

#### **VI. NEVADA BELL'S ENTRY INTO THE INTERLATA MARKET IS IN THE PUBLIC INTEREST**

454. Under Section 271(d)(3)(C), Congress requires the FCC to find whether in-region, interLATA services authorization for an applying BOC is "consistent with the public interest, convenience and necessity."<sup>1054</sup> The FCC's evaluation pursuant to Section 271(d)(3)(C) is "[s]eparate from determining whether a BOC satisfies the competitive checklist and will comply with section 272."<sup>1055</sup> A state commission's role under the Act is to consult on Nevada Bell's compliance with the requirements of the competitive checklist under Section 271(c) and, therefore, the Commission is not required to make any recommendation or finding on the Company's satisfaction of the public interest standard.<sup>1056</sup> Nevertheless, the Commission has received ample evidence to establish that granting Nevada Bell in-region, interLATA services authority is consistent with the public interest, convenience and necessity.

455. In determining whether the public interest is satisfied under Section 271, the FCC employs a two-prong test. First, the FCC assesses whether approval of the application is consistent with promoting competition in the local and long distance telecommunications

<sup>1054</sup> 47 U.S.C.A. § 271(d)(3)(C).

<sup>1055</sup> See Memorandum Opinion and Order, Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc. For Authorization to Provide In-Region, InterLATA Services in Massachusetts, CC Docket No. 01-9, FCC 01-130, ¶ 232 (rel. Apr. 16, 2001) ("Verizon Massachusetts Order").

<sup>1056</sup> See 47 U.S.C.A. §§ 271(d)(2)(B).

markets in a particular region. Second, the FCC will examine whether there are adequate assurances of future compliance with the requirements of Section 271 after entering the long distance market. The record in this docket establishes that in the case of Nevada Bell, both of these tests are met.

**A. Competition in local and long distance markets**

456. The FCC has made clear in a number of cases that a BOC's proven compliance with the competitive checklist "embodies the critical elements of market entry under the **Act**,"<sup>1057</sup> and will support the conclusion that "barriers to competitive entry in the local markets have been removed and the local exchange markets today are open to competition."<sup>1058</sup> Nevada Bell has established a record that amply supports the conclusion that the Company has satisfied each of the fourteen items *on* the competitive checklist.<sup>1059</sup>

457. Thus, in accordance with the analytical framework applied by the FCC, the relevant query is whether there are any "unusual circumstances that would make entry contrary to the public interest" given the circumstances of Nevada Bell's application.<sup>1060</sup> On this subject, the Staff, BCP and competitive providers have only identified as relevant facts that CLECs are only serving residential customers through resale and the lack of a substantial residential customer base among the new entrants. The FCC has discussed this same situation in prior 271 orders,<sup>1061</sup> There, the FCC concluded that low customer volumes and minimal competition for residential customers "do not undermine" an "affirmative showing that a market is open and the competitive checklist has been satisfied."<sup>1062</sup> In this regard, the FCC noted that these types of marketplace circumstances may be the result of factors beyond the BOC's control such as individual CLEC entry strategies, and "Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance."<sup>1063</sup>

<sup>1057</sup> Verizon Massachusetts Order ¶ 234.

<sup>1058</sup> See id.

<sup>1059</sup> See Section V supra.

<sup>1060</sup> Verizon Massachusetts Order 1233.

<sup>1061</sup> See, e.g., SBC Kansas/Oklahoma Order ¶ 268; Verizon Massachusetts Order ¶ 235

<sup>1062</sup> See id.; SBC Kansas/Oklahoma Order ¶ 268.

<sup>1063</sup> Id.; Verizon Massachusetts Order ¶ 235.

458. Likewise, the FCC has repeatedly opined that “BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.”<sup>1064</sup> Again, as demonstrated, the record establishes Nevada Bell’s satisfaction of the competitive checklist.<sup>1065</sup> Moreover, the Company has submitted evidence readily supporting the fact that Nevada Bell’s entry into the long distance market would benefit consumers and foster a more competitive marketplace in interLATA services.<sup>1066</sup>

**B. Nevada Bell’s PM&IP will prevent backsliding**

1. Overview

459. Under the Commission’s supervision and in collaboration with interested competitive providers, Nevada Bell has developed a comprehensive and effective PM&IP. The PM&IP is a continuously evolving plan for the collection, reporting and assessment of data concerning the pre-ordering, ordering, provisioning, maintenance, repair and billing of UNEs, interconnection, and collocation services. Clearly stated business rules and statistical parity and benchmark performance standards form the foundation for a self-enforcing mechanism that penalizes substandard performance. The PM&IP, in short, provides regulators and competitive providers assurance that Nevada Bell will deliver quality wholesale products and services to CLECs in a timely manner

2. Standard

460. “[T]hat a BOC will be subject to performance monitoring and enforcement mechanisms [is] probative evidence that the BOC will continue to meet its section 271 obligations and that its entry would be consistent with the public interest.”<sup>1067</sup> The details of performance monitoring and enforcement “mechanisms developed at the state level may vary

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<sup>1064</sup> Id. ¶ 234.

<sup>1065</sup> See Section V supra.

<sup>1066</sup> See Exhibit 95, Prefiled Direct Testimony of Michael J. Raimondi and Draft Affidavit; Exhibit 96, Prefiled Direct Testimony of Timothy J. Tardiff and Draft Affidavit; Exhibit 97, Prefiled Direct Testimony of Thomas F. Cargill and Draft Affidavit.

<sup>1067</sup> SBC Kansas Oklahoma Order ¶ 269.

widely.”<sup>1068</sup> Consequently, the FCC assesses “certain key aspects of [performance measurement] plans to determine whether they fall within a zone of reasonableness, and are likely to provide incentives that are sufficient to foster post-entry checklist compliance.”<sup>1069</sup> The FCC’s analysis takes into account all of the facts and circumstances, but focuses upon certain key considerations such as the existence of business rules clearly defining the structural elements of the plan.<sup>1070</sup> an evolutionary mechanism that allows the plan to meet the changing needs of the industry and regulators,<sup>1071</sup> a self-executing enforcement mechanism.<sup>1072</sup> and procedures that ensure data reliability.<sup>1073</sup> **As** explained below, the PM&IP contains each of those elements.

### 3. Analysis

461. Nevada is unique among the states. The Nevada Legislature has mandated that the Commission establish “standards of performance and reporting regarding the provision of interconnection, unbundled network elements, and resold services, which encourage competition and discourage discriminatory conduct in the provision of local telecommunication services.”<sup>1074</sup> The measurements must be accompanied by regulations that establish “expedited procedures for imposing penalties upon a provider of telecommunication services for actions that are inconsistent with the standards.”””” Building upon the collaborative efforts of Nevada Bell, Staff, BCP and interested CLECs that began before the passage of Senate Bill 440 in 1997, the Commission has faithfully implemented the Legislature’s charge.

#### a. The PM & IP’s comprehensive set of performance measurements are built upon clearly defined business rules

402. Nevada Bell’s performance measurements are the result of collaborative efforts among Nevada Bell, the Commission, and interested CLECs to formulate a robust set of metrics to reflect Nevada’s experience with local competition. These measures track all aspects of

<sup>1068</sup> SBC Texas Order ¶ 423.

<sup>1069</sup> Id.

<sup>1070</sup> Id. ¶ 426.

<sup>1071</sup> Id. ¶ 425.

<sup>1072</sup> Id. ¶ 427.

<sup>1073</sup> Id. ¶ 428.

<sup>1074</sup> NEV. REV. STAT. § 704.281

<sup>1075</sup> Id.

Nevada Bell's wholesale performance, including pre-ordering, ordering, provisioning, maintenance, network performance, billing, database updates, collocation, and interface availability. Data collected and reported under the PM&IP not only reflect all aspects of the CLECs actual commercial experience, but also correlate with the 14-point checklist.<sup>1076</sup> Each of the PMs has a clearly articulated "definition or 'business rule' that sets forth the manner in which performance data are to be collected, lists any relevant exclusions and states the applicable method of calculation and performance standards."<sup>1077</sup>

**363.** To assess Nevada Bell's performance on each of those measurements, data are collected monthly and disaggregated on a product-specific basis in accordance with detailed business rules approved by the Commission.<sup>1078</sup> The PMs compare Nevada Bell's wholesale service either directly to the level of service provided to Nevada Bell's retail operations, or to a benchmark.<sup>1079</sup> The Company uses traditional statistical analysis to gauge the significance of apparent differences in performance. Nevada Bell makes its performance data available to CLECs through an Internet website.<sup>1080</sup> CLECs may obtain their own individual CLEC data (which are not available to other CLECs), aggregated data for all CLECs, and Nevada Bell's retail data.<sup>1081</sup> CLECs, in addition, can request the raw data underlying particular performance results, while the Commission and Staff can access all reportable data."<sup>1082</sup>

h. The PM&IP has and will continue to evolve to meet the changing needs of the telecommunication industry and regulators

464. The FCC has emphasized that the "continuing ability of the measurements to evolve is an important feature because it allows [performance measurement and incentive plans] to reflect changes in the telecommunications industry."<sup>1083</sup> History establishes and regulatory

<sup>1076</sup> See Exhibit 140, Gleason/Johnson Direct, Attachment 1 CG/GSJ E (correlating performance measurements with checklist items).

<sup>1077</sup> Exhibit 140, Gleason/Johnson Direct ¶ 18.

<sup>1078</sup> See generally *id.*; see also Exhibit 141, Johnson Supplemental Direct at 5.

<sup>1079</sup> Exhibit 140, Gleason/Johnson Direct ¶ 11. The Commission reviews and approves (or modifies) the benchmark and parity standard during its annual review process.

<sup>1080</sup> *Id.* ¶ 48.

<sup>1081</sup> *Id.* ¶¶ 48-50.

<sup>1082</sup> *Id.* ¶ 50.

<sup>1083</sup> SBC Kansas/Oklahoma Order ¶ 275; see, e.g., Texas Order ¶ 125.

requirements mandate that the PM&IP has and will continue *to* evolve to *meet the* needs of competitors and regulators.

465. The Commission first opened an investigatory docket to create a performance monitoring and enforcement mechanism on September 24, 1997. After receiving comments and participating in Commission sponsored collaborative workshops addressing the construction of performance measurements, data collection and reporting, comparative analogs, benchmarks, statistical tests, audits, and incentives, Nevada Bell and several competitive providers, including AT&T, WorldCom, and ATG, entered a stipulation resolving many issues. The Commission adopted the stipulation, held hearings on unresolved issues, and issued a decision on June 23, 1999, requiring Nevada Bell to file a performance measurement plan based on the stipulation and Commission created performance measures.

466. Nevada Bell filed a PM plan on March 8, 2000; the following year, the parties followed an informal collaborative process to refine the plan. In March, 2001, the parties reached another stipulation. Today, the Commission reviews Nevada Bell's PM and incentive plan every three years pursuant to NAC 704.680303.<sup>1084</sup> Nevada Bell's performance measurement and enforcement mechanism has thus evolved – and will continue to evolve – as needed “to reflect changes in the telecommunications industry.”<sup>1085</sup>

c. The PM&IP contains a self-executing mechanism to prevent backsliding

467. The Nevada Legislature has directed the Commission to establish a self-enforcing incentive plan that guards against discriminatory conduct.””” The Commission has responded by ordering Nevada Bell to implement an incentives plan that without adoubt will “foster post-entry checklist compliance.”<sup>1087</sup> The plan places at risk up to 36 percent of Nevada Bell's annual

<sup>1084</sup> NEV. ADMIN. CODE § 704.681130, as revised on October 24, 2002.

<sup>1085</sup> SBC Texas Order ¶ 425.

<sup>1086</sup> See NEV. REV. STAT. § 704.281

<sup>1087</sup> See Order. In re filing by Nevada Bell Telephone Company for review and approval of its plan for the reporting and auditing of performance measures and a plan establishing performance incentives, Docket No. 01-1048 (iss. August 28, 2001) (approving all components of Nevada Bell's incentive plan, except a tier II component); Order. In re filing by Nevada Bell Telephone Company for review and approval of its plan for the reporting and auditing of performance measures and a plan establishing performance incentives, Docket No. 01-1048 (iss. May 13, 2002) (approving tier II component of incentive plan); SBC Texas Order ¶ 423.

net revenue, reflecting both the interstate and intrastate portions of net return derived from local exchange service based on the most recently published ARMIS data. This “cap” mirrors the liability – measured as a percentage of net revenue – that the FCC has, in prior 271 orders, found sufficient to discourage “backsliding.”<sup>1088</sup>

468. The structural features of Nevada Bell’s incentive plan are carefully “designed to detect and sanction poor performance when it occurs.”<sup>1089</sup> The plan is designed with two tiers.<sup>1090</sup> The first tier awards payments to individual CLECs, based on the number of measures that are missed for that CLEC in a given month. Nevada Bell’s Tier I payments will increase considerably where performance on a particular measure is chronically out-of-compliance.

469. Tier II is designed to detect the “masking” of CLEC discrimination that could result from small sample sizes and to remedy the effects of failing submeasures that would have a wide-spread effect on the industry.””” Tier II payments are made to the Nevada general fund where Nevada Bell misses specific measurements and certain conditions are satisfied. The plan is also self-executing, requiring Nevada Bell to make payments in the event of sub-standard performance and requiring Nevada Bell to resort to regulatory procedures if it wants to challenge payments in excess of the procedural cap.

d. Independent Data Testing & Data Reconciliation

470. Nevada Bell’s data collection methods and procedures have passed an independent, third party test conducted by PwC. “[A] comprehensive audit of both Pacific Bell’s and Nevada Bell’s performance measurement system and processes was completed in 1999 and

<sup>1088</sup> See, e.g., SBC Texas Order ¶ 424; SBC Kansas/Oklahoma Order ¶ 274 & n.837; Bell Atlantic New York Order ¶ 436 n.1332; Verizon Massachusetts Order ¶ 241 & n.769.

<sup>1089</sup> Massachusetts Order ¶ 245.

<sup>1090</sup> See Order, In re filing by Nevada Bell Telephone Company for review and approval of its plan for the reporting and auditing of performance measures and a plan establishing performance incentives, Docket No. 01-1048 (iss. August 28, 2001) (approving all components of Nevada Bell’s incentive plan, except a tier II component); Order, In re filing by Nevada Bell Telephone Company for review and approval of its plan for the reporting and auditing of performance measures and a plan establishing performance incentives, Docket No. 01-1048 (iss. May 13, 2002) (approving tier II component of incentive plan).

<sup>1091</sup> See Order, In re filing by Nevada Bell Telephone Company for review and approval of its plan for the reporting and auditing of performance measures and a plan establishing performance incentives, Docket No. 01-1048 (iss. May 13, 2002).



all findings have been corrected and revalidated.”<sup>1092</sup> The audit process was developed by a steering committee – consisting of Nevada Bell and CLEC representatives – that defined the scope of the audit, selected the auditor, participated in regular status meetings during the course of the audit, and previewed a draft final audit report summarizing the results.” PwC’s December 31, 1999, report confirmed that Nevada Bell’s performance data gathering and reporting processes substantially comply with the business rules for each performance measurement, and the report also validated numerical results reported by Nevada Bell.<sup>1094</sup>

471. PwC identified two areas of potential improvement to Nevada Bell’s control of data and its reporting of monthly reports, neither of which directly called into question any of Nevada Bell’s reported results. Nevada Bell implemented corrections to address those recommendations.<sup>1095</sup> Moreover, “Reconciliation studies of Pacific Bell’s reported results and CLEC-tracked results were performed in California in 2000.”<sup>1096</sup>

472. The accuracy and reliability of Nevada Bell’s data are bolstered by the following facts. First, the “same work groups responsible for collecting and reporting performance measurement results for Pacific Bell also are responsible for collecting and reporting performance measurement results for Nevada Bell.”<sup>1097</sup> Second, the data underlying the performance results reported by Nevada Bell and Pacific Bell are gathered “from the same information systems.”<sup>1098</sup> Finally, the business rules applicable to capturing data are virtually identical.<sup>1099</sup> Indeed, that PwC conducted a joint audit of Pacific Bell and Nevada Bell’s performance measurement and reporting systems and processes, buttresses the fact that the systems are one and the same. Collectively, the results of Pacific Bell’s data reconciliation

<sup>1092</sup> Exhibit 141, Johnson Supplemental Direct at 8

<sup>1093</sup> Exhibit 140, Gleason/Johnson Direct ¶ 51

<sup>1094</sup> See id. ¶ 55 (“Our examination of management’s assertions regarding Nevada Bell’s OSS performance measure systems and processes compliance . . . confirmed that the systems and processes were substantially in compliance with those assertions . . .” (quoting PwC Executive Summary and Observations Report at 8)).

<sup>1095</sup> Id. ¶57; see also Exhibit 141, Johnson Supplemental Direct at 8

<sup>1096</sup> Exhibit 141, Johnson Supplemental Direct at 8.

<sup>1097</sup> Id.

<sup>1098</sup> Id.

<sup>1099</sup> Id.

efforts provide circumstantial evidence of the accuracy and reliability of Nevada Bell's reported results.

c. Issues Raised By Staff, BCP, and Competitive Providers

473. Staff, BCP and CLECs did not raise any serious questions about the adequacy of Nevada Bell's PM&IP. All of the evidence establishes that the PM&IP contains all of the elements of an effective performance remedy plan. "Nevada Bell's plan contains clearly stated, comprehensive measures and standards that are designed to detect and sanction deficient performance. As a result of independent data testing, CLECs and regulators have strong assurance that Nevada Bell's performance reports are accurate. Finally, Nevada Bell will be subject to self-executing payment obligations that provide a meaningful incentive to continue to provide CLECs with nondiscriminatory facilities and services following entry into the in-region, interLATA services market.

**VII. COMPLIANCE WITH SECTION 272**

**A. Overview**

374. The Act does not require the FCC to consult with the commission on any issue other than compliance with Track A and the 14-point checklist.<sup>1101</sup> However, other state commissions have addressed areas in addition to Track A and the competitive checklist in their consultation reports.<sup>1102</sup> Moreover, the Company presented witnesses during Phase II-A who testified about the long distance affiliate's ("SBCLD"), and Nevada Bell's procedures for ensuring compliance with Section 272.<sup>1103</sup> Consequently, in this section, we briefly address compliance with Section 272.

<sup>1100</sup> See, e.g., SBC Texas Order ¶¶ 422-429; New York Order ¶¶ 433-443; SBC Kansas/Oklahoma Order ¶¶ 273-279.

<sup>1101</sup> See 47 U.S.C.A. § 271(d)(2)(B) ("[T]he [FCC] shall consult with the State Commission of any state that is the subject of the application in order to verify compliance of the Bell operating company with the requirements of subsection (c).")

<sup>1102</sup> See, e.g., SBC Texas Order ¶¶ 423 & 426.

<sup>1103</sup> The Staff recommended that the Commission develop a record on Section 272 issues. See generally Exhibit 106, Direct Testimony of Jeffrey W. Galloway, Phase II-A filed March 26, 2001.

## B. Standard

475. In its Application to the FCC, Nevada Bell must establish that "the requested authorization will be carried out in accordance with the requirements of Section 272." The FCC set standards for compliance with Section 272 in the Accounting Safeguards Order and the Non-Accounting Safeguards Order.<sup>1105</sup> These orders establish accounting, procedural, and structural safeguards that facilitate the detection of, as well as discourage, improper cost allocation and cross-subsidization between Nevada Bell and SBCLD.<sup>1106</sup> These safeguards make sure that Nevada Bell and other carriers compete on a level playing field."

## C. Analysis

476. The FCC has reviewed the accounting practices and the compliance procedures implemented and followed by SBCLD and its BOC affiliates in three separate 271 proceedings. Each time, the FCC has concluded that SBCLD and its BOC affiliates operate in compliance with Section 272.<sup>1108</sup> Nevada Bell and SBCLD will follow the same practices and procedures in Nevada that SWBT and SBCLD follow in Arkansas, Kansas, Missouri, Oklahoma, and Texas.<sup>1109</sup> This testimony, coupled with the FCC's finding in approving the Arkansas, Kansas, Missouri, Oklahoma, and Texas Applications establish that the Company and SBCLD will operate in compliance with Section 272.

<sup>1104</sup> SBC Texas Order ¶ 394 (quoting 47 U.S.C.A. § 271(d)(3)(B)).

<sup>1105</sup> See Implementation of the Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket "in. 96-50, Report and Order, (1996) ("Accounting Safeguards Order"). Second Order on Reconsideration. FCC 00-9 (rel Jan 18, 2000); Implementation of the Non-Accounting Safeguards of Sections 271 and 282 of the Communications Act of 1934, as amended, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking (1996) ("Non-Accounting Safeguards Order"), petition for review sub nom. SBC Communications v. FCC, No. 97-1118 (filed D.C. Cir. Mar. 6, 1997) (held in abeyance May 7, 1997). First Order on Reconsideration (1997) (First Order on Reconsideration), Second Order on Reconsideration (1997) ("Second Order On Reconsideration"). affd sub nom. Bell Atlantic Telephone Companies v. FCC, 131 F.3d 1044 (D.C. Cir. 1997). Third Order on Reconsideration, FCC 94-242 (rel Oct 4, 1999) ("Third Order on Reconsideration")

<sup>1106</sup> See SBC Texas Order ¶ 394

<sup>1107</sup> See id. ¶ 395

<sup>1108</sup> See SBC Texas Order ¶ 396.

<sup>1109</sup> See Exhibit 100, Pre-filed Direct Testimony of Joe Carrisalez and Draft Affidavit ¶ 6 ("The material statements of fact made in this affidavit are the same as those that were made in my affidavit filed on October 26, 2000 in support of SBC's Kansas and Oklahoma joint 271 Application.") ("Carrisalez Direct"); Exhibit 102, Pre-filed Direct Testimony of Linda G. Yohe and Draft Affidavit ¶ 6 (accord) ("Yohe Direct"); Exhibit 103, Direct Testimony of Robert L. Henrichs and Draft Affidavit of Kathleen Larkin ¶ 6 (accord) ("Henrichs Direct").

477. The Staffs testimony corroborates the testimony of Nevada Bell's witnesses. Staff conducted a comprehensive review of Nevada Bell's testimony, financial statements, procedures, policies, and data responses.<sup>1110</sup> Staff concluded that the Company and SBCLD comply with the accounting safeguards<sup>1111</sup> and the non-accounting safeguards.<sup>1112</sup> While Staff recommended that the Commission impose limitations on the Company and SBCLD's use of customer proprietary network information and joint marketing efforts, those issues were addressed and resolved in a separate proceeding in which SBCLD applied for and was granted a certificate of public convenience and necessity.<sup>1113</sup>

478. To summarize, the evidence of record demonstrates that SBCLD and Nevada Bell will provide interLATA services in compliance with Section 272. Although the Commission need not consult with the FCC on this issue, the Commission has developed a sound record that supports a finding of compliance.

## **VIII. CONCLUSION**

479. For the foregoing reasons, the Commission recommends that the FCC find that Nevada Bell is eligible for relief under Section 271 of the Act.

THEREFORE, based upon the foregoing findings of fact and conclusions of law:

1. The Public Utilities Commission of Nevada RECOMMENDS that the Federal Communications Commission find Nevada Bell Telephone Company, SBC Communications, Inc., and Southwestern Bell Communications Services, Inc., d/b/a Nevada Bell Long Distance eligible to provide In-Region InterLATA Services in Nevada.

2. All arguments of the parties raised in these proceedings, including but not limited to arguments raised in the prehearing conferences and hearings, not expressly considered herein

<sup>1110</sup> See Exhibit 106, Galloway Direct, Phase II-A at 4-10.

<sup>1111</sup> Id. at 1.

<sup>1112</sup> Id. at 2.

<sup>1113</sup> See Compliance Order, In re Application of Southwestern Bell Communication Services, Inc., d/b/a Ameritech Long Distance, Pacific Bell Long Distance, Southwestern Long Distance, Nevada Bell Long Distance, and SBC Long Distance ("SBCS"), for authority to operate as a competitive provider of telecommunications services, providing resold and facilities-based interexchange services within the state of Nevada and request for affirmative relief from the settlement agreement in Docket No. 97-2010 and for authority for SBCS to use customer proprietary network information, P.U.C.N. Docket No. 01-5007 (Iss. Nov. 11, 2001)

have been considered and either rejected or found to be non-essential further support for this Recommendation.

3. The Commission retains jurisdiction for the purpose of correcting any errors that may have occurred in the drafting or issuance of this Recommendation.

By the Commission,,'

  
DONALD L. SODERBERG, Chairman and  
Presiding Officer

  
RICHARD M. MCINTIRE, Commissioner

  
ADRIANA ESCOBAR CHANOS, Commissioner

Attest:   
CRYSTAL JACKSON, Commission Secretary

Dated: Carson City, Nevada

(SEAL)   
1-11-13